



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

OCT 13 2009

Colonel David C. Weston
District Engineer, Galveston District
Department of the Army, Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

Re: San Jacinto River Waste Pits Superfund Site, Harris County, Texas

Dear Colonel Weston:

This letter represents an update by the U.S. Environmental Protection Agency (EPA) on events related to the San Jacinto River Waste Pits Superfund Site (Site).

As you know, the EPA is involved in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) negotiations with potentially responsible parties to conduct a Remedial Investigation and Feasibility Study at the Site. Due to these negotiations and the unique location of the Site, permitted activities under Clean Water Act Section 404 and Rivers & Harbors Act Section 10, that impact the Site, may expose permittees to CERCLA liability.

To minimize permittee exposure to CERCLA liability and to continue permitted activities, an interagency workgroup between EPA, U.S. Army Corps of Engineers, and Texas Commission on Environmental Quality developed a Permit Pre-Conditions and Conditions Process, which all pending permit applicants and existing permittees must undertake.

This process and the area that it affects are enclosed with this letter. I look forward to updating you again as progress continues on this Site. If there are any questions regarding this matter, please feel free to contact Mr. Carlos Sanchez at (214) 665-8507 or Mr. Stephen Tzhone of my staff at (214) 665-8409.

Sincerely yours,

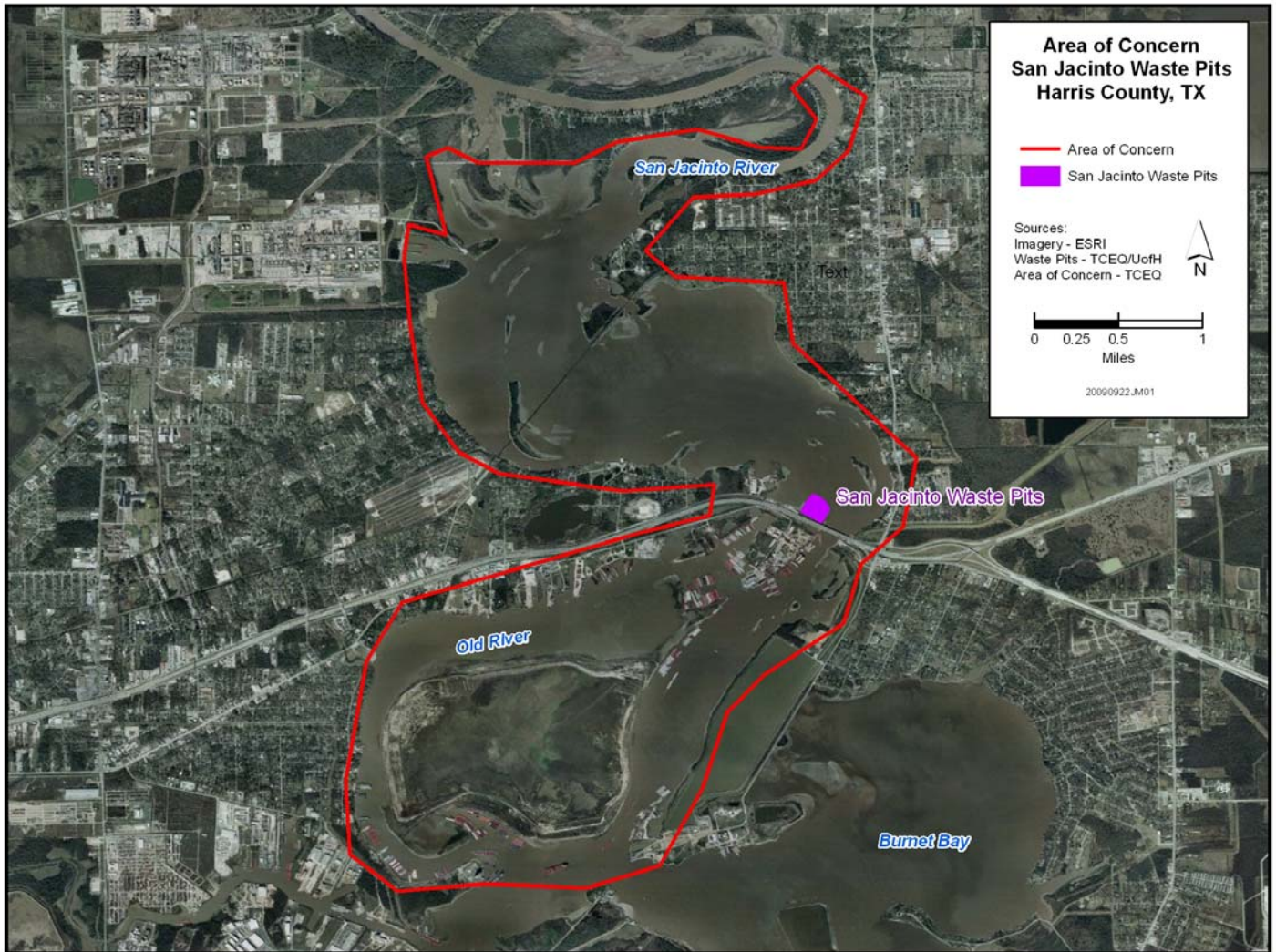
A handwritten signature in dark ink, which appears to read "Sam Phillips Acting", is written over the typed name "Samuel Coleman, P.E.".

Samuel Coleman, P.E.
Director
Superfund Division

Enclosure

PERMIT PRE-CONDITIONS AND CONDITIONS PROCESS

I. AREA OF CONCERN DESCRIPTION



Horizontal Datum Name: NAD 83

Ellipsoid Name: GRS 80

SOUTH of:

longitude -95.063977 latitude 29.833028

(line perpendicular to river channel from approximately 20400 Rio Villa Drive)

NORTH of:

longitude -95.086488 latitude 29.761463

(line of sight bearing from DeZavalla Point to south terminal of Lynchburg Ferry, then along ferry route to north terminal).

II. PRE-CONDITIONS AND CONDITIONS PROCESS

II.A. PERMIT PRE-CONDITIONS PROCESS

TCEQ shall verify the fulfillment of the pre-conditions process (sections II.A.1. to II.A.4.) and certify to USACE the resulting conditions to be integrated into the permit (section II.A.5.).

II.A.1. Required Sampling Procedures

- SOP 1.4- Management of IDW
- SOP 1.5- Decontamination
- SOP 6.1- Documentation
- SOP 6.2- Homogenization of Soil Samples
- SOP 6.4- Sample Handling and Control
- SOP 8.1- Surface Water Sampling Using the Direct Method
- SOP 9.1- Sediment Sampling
- SOP 17.1-GPS Data Collection and Submission

II.A.2. Required State of Texas Lab Certification

- NELAC standard and accreditation process:
<http://www.nelac-institute.org/docs/2003nelacstandard.pdf>
- Current list of accredited labs:
http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf

II.A.3. Required Sample Number & Distribution

II.A.3.1. Sample Number: A minimum of two samples (one vertical composite sample and one post-dredged surface sample) shall be submitted per 5,000 cubic yards of total planned dredged volume (including any planned overdredges or advanced maintenance).

- Post-dredged surface sample (ie- representing the sediment to be exposed by the dredging) equates to one discrete sample that represents the 6” section immediately below the planned dredged depth in the same location(s) as determined in section II.A.3.2.

II.A.3.2. Sample Distribution: Samples identified in section II.A.3.1. shall be distributed evenly across the total planned dredged area.

II.A.4. Required Sample Analysis

- Laboratory sample analysis shall be via EPA 1613, EPA 8280b, or EPA 8290a.
- Laboratory results shall be reported as TEQ and TCDD organic carbon normalized or TCDD non-organic carbon normalized.
- Laboratory shall use WHO 2005 TEF to calculate TEQ.

II.A.5. Conditions Determination

- If sample >1000 ppt TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill.
- If sample >33 ppt TCDD organic carbon normalized and <1000 TEQ; or, >0.45 ppt TCDD non-organic carbon normalized and <1000 TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill or upland confined disposal area.
- If sample <33 ppt TCDD organic carbon normalized; or, <0.45 ppt TCDD non-organic carbon normalized, then no restrictions on disposal location of sample's representative volume (or dredged materials).

II.B. PERMIT CONDITIONS PROCESS:

After the TCEQ's evaluation of Section II.A. is submitted to the USACE Galveston District, the USACE will review the information and will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements under the Clean Water Act and Rivers and Harbors Act of 1899 to otherwise satisfy the public interest requirement. The USACE will only be responsible for enforcing those conditions that are specifically tied to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

In addition, the permit shall contain the following language:

"By accepting this permit, the permittee agrees to accept potential liability for both response costs and natural resource damages, to the same extent as would be inherent under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et. Seq.). Further, the permittee agrees that this permit does not exclude the permittee from liability under the CERCLA, nor does the permit waive any liability for response costs, damages, and any other costs that may be assessed under the CERCLA."